

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

PEGGY TESSENEER,

Plaintiff,

v.

NO. 1:95CV253-S

IUKA APARTMENTS, LTD., d/b/a
RIVERSIDE APARTMENTS, AND
OLSEN SECURITIES CORPORATION,

Defendants.

OPINION

This cause came on for trial by the court sitting without a jury. Having heard and considered the evidence presented by the parties, together with the arguments of counsel, the court makes its finding of fact pursuant to Rule 52 of the Federal Rules of Civil Procedure.

The plaintiff, Peggy Tesseneer, is a 49-year old female. Mrs. Tesseneer is diabetic and as a result of complications arising from her diabetes, she had both of her legs amputated below the knee in 1992 and 1993. She lives with her husband and cares for several of her grandchildren who are school age.

The defendant, Iuka Apartments, Ltd., is a limited partnership which owns the Riverside Apartments, a 78-unit apartment complex in Iuka, Mississippi. This apartment complex was refinanced and rehabilitated with a loan procured through the Farmers Home

Administration (FmHA) to provide subsidized low income housing. The defendant, Olsen Securities Corporation, manages the subject apartment complex.

Pursuant to a pretrial conference, the parties proposed a pretrial order to the court, which was approved by the court August 9, 1996. This pretrial order contains numerous stipulations which are accepted as facts proven in this case. In addition, counsel for the parties have stipulated that a letter from defense counsel to plaintiff's counsel dated August 20, 1996, correctly and succinctly states the issues in this case. The letter has been made an addendum to the pretrial order and filed in this cause. In pertinent part, the letter narrows the issues in this case to be: "There will be liability under Section 504 [of the Rehabilitation Act] if plaintiff requested reasonable accommodations which were not implemented by defendants and plaintiff's fall was caused by the failure to make these accommodations....Handicap bars and a wider bathroom door are reasonable accommodations within the meaning of the Act. Therefore, the triable issues are what requests were made by plaintiff and the causal connection between the alleged requests and the fall...."

In November, 1994, Peggy Tesseneer and husband, David Tesseneer, leased a 2-bedroom apartment at Riverside Apartments. Mrs. Tesseneer has been confined to a wheelchair since the amputation of her legs, but had the ability to walk for a limited

time and distance on her knees. In arranging for the rental of the apartment, she went with her husband into the office of Mrs. Becky Dobbs, the resident manager of the Riverside Apartments, to complete the paperwork for the apartment rental. Mrs. Dobbs testified that the plaintiff was the first wheelchair bound double amputee she had as a tenant during her eleven years of managing Riverside Apartments. There was a discussion regarding handicap access in the apartment by the parties, but no alterations were made to the 2-bedroom apartment.

In March, 1995, Mrs. Tesseneer and her husband learned that another grandchild would be living with them, and they requested that they be permitted to move to a 3-bedroom apartment to accommodate their family. Finding that they qualified for the 3-bedroom apartment, the resident manager, Becky Dobbs, told them, "We are going to have to make several handicap apartments; we may as well make this 3-bedroom apartment one of them." The Tesseneers moved into the 3-bedroom apartment which had two bathrooms, neither one of which had a door wide enough for a wheelchair to enter. Also, neither bathroom was equipped with the usual handicap accessibility grab bars for the commode or bathtub. The defendant did modify and add a new concrete sidewalk which enabled Mrs. Tesseneer to roll onto the outside patio, and defendants agreed that Mr. Tesseneer could move the cooking stove with front

controls for handicap accessibility from the 2-bedroom apartment to the 3-bedroom apartment.

The proof shows that the resident manager, Becky Dobbs, visited and inspected the 3-bedroom apartment occupied by plaintiff and her family on several occasions prior to the plaintiff's accident on May 8, 1995. Both plaintiff and her husband testified that they requested on several occasions that the bathroom door in the apartment be widened and that grab bars for the commode and bathtub be installed. Although Mrs. Dobbs testified that plaintiff shunned her offer to install grab bars, the more believable evidence in this case convinces the court that plaintiff and her husband requested that the bathroom door be widened and grab bars installed for the commode and bathtub at least one month or more prior to plaintiff's fall on May 8, 1995.

On May 8, 1995, shortly after 5:00 a.m., plaintiff slid from her bed into her wheelchair and rolled herself to the bathroom door where she had to lower herself from the wheelchair onto the floor and walk on her knees to the commode. Upon lowering herself from the commode back to the floor, plaintiff slipped because she had no handicap grab bar nor was she able to have her wheelchair close enough to use for support. This fall on the bathroom floor resulted in a broken right hip for which plaintiff underwent surgery on May 9, 1995. The surgery consisted of an open reduction and internal fixation of a right intertrochanteric hip fracture and

was performed by Dr. John Foropoulos at the Magnolia Regional Health Center in Corinth, Mississippi. Plaintiff was hospitalized from May 8, through May 12, 1995, and remained under the care of Dr. Foropoulos until October 12, 1995. It is stipulated that as a result of plaintiff's accident, she incurred necessary and reasonable expenses in the total sum of \$10,193.00.

When plaintiff fell in the early morning of May 8, 1995, she was in excruciating pain as a result of the fracture to her right hip. This pain continued for days and remains to this day because of the internal fixation to her hip.

Although Mrs. Tesseneer was not working at the time of her accident, she attempted to perform as many of the daily tasks of housekeeping and child rearing that her handicap permitted. She enjoyed her family, being able to take automobile rides, and sitting for long periods in her wheelchair watching the children play on an adjoining ball court. She also was able to perform some cooking tasks and enjoyed limited mobility through her ability to walk on her knees. Unfortunately, the broken hip has severely curtailed plaintiff's independence and limited her enjoyment of life as she knew it prior to the accident, and she is entitled to recover damages therefor.

The court finds that plaintiff is entitled to damages to compensate her for medical expenses, pain and suffering, and her loss of enjoyment of life as caused by her fall which, in turn, the

court finds was caused by the failure of defendant to make the mentioned reasonable accommodations to plaintiff's bathroom.

The court finds plaintiff is entitled to the sum of \$10,193.00 for her reasonable and necessary medical expenses, \$20,000.00 for pain and suffering, both past, present, and future, and \$20,000.00 for her loss of enjoyment of life. The Rehabilitation Act also allows a discretionary award of attorney's fees to the prevailing party. See 29 U.S.C. § 794a(b). Any fee request should be made within ten days of the entry of judgment in the form of a motion and time and expense itemization.

Let judgment be entered accordingly.

ORDERED this _____ day of August, 1996.

CHIEF JUDGE